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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**
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6 CHADWICK FABIAN VILLAMOR,
7 Plaintiff,
8 v.
9 OFFICER J. METCALFE, et al.,
10 Defendants.

Case No. 2:24-cv-00940-APG-NJK

REPORT AND RECOMMENDATION

11 The Court has now received Plaintiff's initial partial filing fee, Docket No. 8, so it screens
12 his complaint herein as required by 28 U.S.C. § 1915.¹

13 **I. STANDARDS**

14 Federal courts are given the authority to dismiss a case if the action is legally "frivolous or
15 malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from
16 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a
17 complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions
18 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies
19 could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

20 Under Rule 20 of the Federal Rules of Civil Procedure, multiple defendants may be joined
21 in a single suit if (1) the claims against each defendant arise out of the same transaction or
22 occurrence, and (2) any question of fact or law is common to all parties. Fed. R. Civ. P. 20(a).
23 Courts have broad discretion in applying Rule 20. *Armstead v. City of Los Angeles*, 66 F. Supp.
24 3d 1254, 1262 (C.D. Cal. 2014). A finding by the Court that joinder is not proper is not grounds
25 to dismiss a case in its entirety, but the Court may exercise its discretion to "add or drop" parties.
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27 ¹ Plaintiff alleges three claims that each involve different issues, so the Court screens them
28 separately. This report and recommendation relates only to Plaintiff's claim against his prior
counsel for breach of contract.

1 See Fed. R. Civ. P. 21. “Where parties have been inappropriately joined, it is accepted practice
 2 under Rule 21 to dismiss all defendants except for the first named in the complaint; this operates
 3 as a dismissal of plaintiffs’ claims against other defendants without prejudice.” *Armstead*, 66 F.
 4 Supp. 3d at 1263. The Court may exercise its discretion under Rule 21 *sua sponte* at any time.
 5 See Fed. R. Civ. P. 21 (“On motion or on its own, the court may at any time, on just terms, add or
 6 drop a party”); *see also, e.g.*, *Doop v. Wolfson*, 2022 WL 16949713, at *2 (D. Nev. Nov. 15, 2022)
 7 (addressing improper joinder at screening stage).

8 II. ANALYSIS

9 Plaintiff brings three claims in his complaint. The first two relate to the circumstances of
 10 his arrest and corresponding vehicle search. *See* Docket No. 1 at 4-5. The third claim, which is at
 11 issue in this report and recommendation, alleges that Plaintiff’s prior criminal defense attorney
 12 (Adam Solinger) breached his contract by withdrawing without performing agreed-upon services.
 13 *Id.* at 6.² In particular, Plaintiff argues that defense counsel had been paid a flat fee for services
 14 but then withdrew before performing those services. *See id.* Plaintiff also argues that defense
 15 counsel has refused to refund the money paid. *See id.* These allegations against defense counsel
 16 are untethered to the other two claims in the case. Most obviously for Rule 20 purposes, there is
 17 no question of fact or law that is common to all parties. Whether excessive force was used during
 18 Plaintiff’s arrest and whether there was an unlawful vehicle search have no question of fact or law
 19 in common with Plaintiff’s claim that his attorney withdrew prior to fulfilling his contractual
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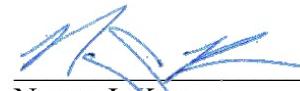
21
 22 ² The complaint at times references breach of contract and at other times appears to seek
 23 to bring a constitutional claim against prior counsel for providing ineffective assistance. *See*
 24 Docket No. 1 at 6. The latter allegations would fail as a matter of law. First, retained attorneys
 25 are not state actors and Plaintiff has alleged no basis to state a constitutional claim against Attorney
 26 Solinger. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *see also Briley v. State of Cal.*, 564 F.2d
 27 849, 856 (9th Cir. 1977) (collecting cases that privately retained attorneys are not acting under
 28 color of state law). Second, Plaintiff pled guilty in his criminal case. *Trigueros v. Adams*, 658
 F.3d 983, 987 (9th Cir. 2011) (federal courts may take judicial notice of state court records).
 Allegations that Plaintiff was provided ineffective assistance during his criminal proceedings
 would imply the invalidity of his conviction, so Plaintiff cannot bring such a claim under 28 U.S.C.
 § 1983. *See, e.g., Nuno v. Cnty. of San Bernardino*, 58 F. Supp. 2d 1127, 1132 (C.D. Cal. 1999)
 (quoting *Hanley v. Stewart*, 21 F. Supp. 2d 1088, 1089-90 (D. Ariz. 1998)). Hence, this report and
 recommendation addresses only the aspect of this claim alleging breach of contract.

1 duties. As such, the breach of contract claim against prior defense counsel is not properly brought
2 within this case.

3 **III. CONCLUSION**

4 Accordingly, the undersigned **RECOMMENDS** that Defendant Adam Solinger be
5 **DISMISSED** from this case without prejudice.³

6 Dated: November 21, 2024.



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8 Nancy J. Koppe
9 United States Magistrate Judge
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11 **NOTICE**

12 This report and recommendation is submitted to the United States District Judge assigned
13 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
14 recommendation must file a written objection supported by points and authorities within fourteen
15 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
16 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
17 F.2d 1153, 1157 (9th Cir. 1991).

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³ If Plaintiff decides to refile the case against prior defense counsel, he should carefully consider whether that case should be filed in state court given that it appears subject matter jurisdiction may be lacking for the case to be brought in federal court.